In the High Court of Uttaranchal, at

Nainital.

A.O. No. 27 of 2005

United India Insurance Co. Ltd.
Branch Almora, District Almora
Through its Divisional Manager,
Divisional Office, Tikonia, Nainital Road,
Haldwani, District Nainital ..... Appellant.

Vs.

1- Smt. Devki Devi @ Debuli Devi
W/o Late Nand Ram
R/o Village Sutargaon P.O. Kunwali
Patti Kaligarh, Tehsil Ranikhet
District Almora.

2- Bhupal Singh S/o Khim Singh
R/o Village Mahatgaon, Patti Kaligarh
District Almora ... Respondents.

Sri Naresh Pant, learned counsel for the appellant.
Ms. Geeta Parihar, learned counsel for the respondents.

Hon'ble B.C. Kandpal, J.

This appeal from Order, U/S 173 of the Motor Vehicles Act, 1988, has been preferred against the judgment and award dated 3-11-2004, passed by District Judge/M.A.C.T. Almora, in MACP No. 21 of 2003, thereby awarding compensation of Rs. 87,000/- along-with interest @ 9% per annum and Rs. 1000/- as cost of litigation.

2- Brief facts of the case are that deceased Nand Ram aged about 60 years on 2.5.2003 at 1.30 P.M. boarded the jeep bearing registration No. 01/4243 at Ranikhet to village Kunwali but due to the rash and negligence of the jeep driver, it met with an accident, in which Nand Ram sustained grievous injuries and he died in the way while carrying to the hospital. The petitioner alleged that the deceased was a mason and

was earning Rs. 150/- per day. The claimant filed claim petition for Rs. 3,99,000/-

3- The O.P./owner of the offending jeep filed his W.S. and pleaded that the accident did not occur due to rash and negligence of its driver but the accident occurred due to mechanical defect in the vehicle.

4- The O.P./ Insurance Company filed its W.S. and pleaded that the offending jeep was not being plied in accordance with the conditions of insurance policy.

5- The Tribunal on the basis of the pleadings of parties, framed the following issues:-

1- Whether on 2-5-2003 at about 1-00 P.M. at Roadway Bus Stop Ranikhet, the jeep No. U.P.-02-4243 met with an accident due to the rash and negligent driving by its driver, in which Nand Ram has died?

2- Whether the driver of the offending jeep was not having valid driving licence at the time of the accident?.

3- To what amount of compensation the claimant is entitled to get and from whom?.

6- The parties adduced the evidence in support of their case and thereafter the Tribunal decreed the petition for a sum of Rs. 87,000/- as compensation along with interest @ 9% per annum and the cost of the suit, vide impugned judgment and order dated 3-11-2004.

7- Feeling aggrieved by the aforesaid judgment and award, the Insurance Company has preferred this appeal before this court.

8- Heard learned counsel for the parties and perused the record.

9- Learned counsel for the appellant has argued that the offending jeep in question was carrying 10 passengers at the time of the accident, therefore, there was breach of policy, hence the Insurance Company on account of the same is not liable to pay the amount of compensation.

10- Perusal of the record shows that the Insurance Company in its W.S. has not taken any plea in this regard. The evidence, which has been adduced by the Insurance Company before the Tribunal concerned, is the Investigator's Report. But the Investigator's Report does not appear to be convincing, firstly on the ground that the Investigator is not the eye witness of the accident and second that he has also not collected any evidence, which may suggest that in fact the offending jeep in question was carrying 10 passengers at the time of the accident, which is more than the sitting capacity of the offending vehicle.

11- I do not find any substance in the argument advanced by the learned counsel for the appellant.

12- No other point is involved in this appeal.

13- The appeal lacks merit and is liable to be dismissed.

14- Accordingly the appeal is dismissed. The impugned judgment and order dated 3-11-2004, passed by the MACT/District Judge, Almora in MACP No. 21/2003 is affirmed. No order as to cost.

(B.C. Kandpal, J.)

Dated: 22-09-2006.
ISB